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Possible ways of assisting developing countries to attend meetings of the United Nations Commission on International Trade Law

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 3	2
II.	NEED FOR ASSISTANCE	4 - 12	2
III.	POSSIBLE SCOPE OF ASSISTANCE	13 - 21	4
IV.	CONCLUSION	22 - 23	6
Annex.	Travel expenses for some members of the Commission		8

I. INTRODUCTION

1. The United Nations Commission on International Trade Law (UNCITRAL), when discussing at its twenty-third session the United Nations Decade of International Law, noted that the activities, suggested by the General Assembly in its resolution 44/23 of 17 November 1989, relating to the teaching, study, dissemination, wider appreciation and promotion of international trade law would have their impact in all regions, but that they would be of greatest significance in developing countries. In the same spirit, it was suggested that an attempt should be made to finance the travel of experts from developing countries, and especially from States Members of the Commission, to the sessions of the Commission and its working groups so that those States would be in a better position to contribute actively to the creation of international trade law. 1/

2. The General Assembly, in paragraph 5 of its resolution 45/42 of 28 November 1990, requested the Secretary-General in consultation with the Commission's secretariat, to prepare a report with a view to analysing possible ways by which assistance could be given to developing countries that were members of the Commission, in particular least developed countries, so that they might attend meetings of the Commission and its working groups, bearing in mind the arrangements that existed for United Nations bodies generally pursuant to section IX of resolution 43/217, of 21 December 1988, and to submit it to the General Assembly at its forty-sixth session.

3. The present report is submitted pursuant to that request.

II. NEED FOR ASSISTANCE

4. The need for assistance to representatives from developing countries may be deduced from the relatively low incidence of expert participation from those countries in the Commission's activities (see sect. B, below). This limited participation, that is evidently not due to any lack of interest, prevents developing countries from actively contributing in a full and equitable manner to attaining the goals of the Commission as defined in its mandate.

A. Mandate and composition of the Commission

5. The mandate given by the General Assembly to the Commission, as the core legal body within the United Nations system in the field of international trade law, is to "further the progressive harmonization and unification of the law of international trade" and to "bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade" (General Assembly resolution 2205 (XXI) of 17 December 1966, paras. 8 and 9). In the same resolution, the General Assembly reaffirmed its conviction "that divergencies arising from the laws of different States in matters relating to international trade constitute one of

the obstacles to the development of world trade" and recalled its belief "that the interests of all peoples, and particularly those of developing countries, demand the betterment of conditions favouring the extensive development of international trade".

6. The Commission was originally composed of 29 States; its membership was expanded in 1973 to 36 States (General Assembly resolutions 2205 (XXI) and 3108 (XXVIII) of 12 December 1973). Membership is structured so as to be representative of the various geographic regions and the principal economic and legal systems of the world: nine members are from African States, seven are from Asian States, five are from Eastern European States, six are from Latin American States and nine are from Western European and other States. Members of the Commission are elected by the General Assembly for terms of six years, the terms of half of the members expiring every three years.

7. The primary means used by the Commission for fulfilling its mandate has been the preparation of new conventions, model laws and rules and the promotion of their adoption. It is particularly in the work of preparing universally acceptable legal texts that active participation by representatives from all regions and the various legal and economic systems is of crucial importance. Moreover, it is highly desirable that representatives have special expertise in the field of international trade law, in view of the complex and technical nature of the work of the Commission and its working groups. It was for that reason that the General Assembly, in its resolution 2205 (XXI) decided that "the representatives of members on the Commission shall be appointed by Member States in so far as possible from among persons of eminence in the field of the law of international trade".

B. Relatively low incidence of expert representation from developing countries

8. A review of the attendance of representatives from developing countries that are members of the Commission reveals that the incidence of expert representation at sessions of the Commission and its working groups has been rather low and not always consistent. The following indications of expert participation constitute averages of the last three years and take into account the fact that, although some permanent missions may have on their staffs experts specifically in the field of international trade law, representatives with the required expertise in the field usually have to travel from their country to New York or Vienna.

9. At the annual sessions of the Commission, slightly more than half of the developing countries were represented by experts sent from those countries. At the sessions of the Working Group on International Payments, somewhat less than half of the developing countries were represented by such experts. At the sessions of the Working Group on International Contract Practices, only one fourth of the developing countries were represented by experts. At the sessions of the Working Group on the New International Economic Order, the

incidence of expert participation was even lower, with only one sixth of the developing countries that were members of that Working Group.

10. In comparison, expert participation from developed countries has been considerably higher. In fact, all or almost all developed countries that were members of the Commission were represented by experts at the annual sessions of the Commission and the sessions of the Working Group on International Payments, while the incidence of their expert participation at the sessions of the other two working groups was somewhat lower.

11. It may be noted that, during the period under review, the three working groups were composed of all States Members of the Commission. Thus, any State Member of the Commission desirous of exercising in full its concomitant membership in all three working groups would have each year to send experts to at least four, and in some years even five or six, two-week sessions of all working groups together, in addition to the annual session of the Commission with a duration of two to four weeks. This places a heavy burden on developing countries that are members of the Commission, and it may account, in part, for the relatively low incidence of their expert participation in the activities of the Commission and its working groups.

12. It may be added that the relatively low incidence of expert participation is certainly not due to any lack of interest on the part of developing countries in the activities of the Commission. Since the inception of the Commission, developing countries have shown a particular interest in the work of the Commission and, within their financial constraints, have contributed to the creation of universally acceptable legal texts and to the wider adherence to uniform legal texts.

III. POSSIBLE SCOPE OF ASSISTANCE

13. The following considerations are presented with a view to furthering discussion on the possible ways to provide assistance to developing countries, bearing in mind the arrangements that exist for United Nations bodies generally. They relate to the type and number of countries that might eventually receive assistance, to the number of representatives and the type of expenses to be possibly covered, and to the type of meetings for which assistance might be given.

14. At the outset, it should be noted that the framework for this discussion are the rules governing payment of travel expenses and subsistence allowances in respect of members of organs or subsidiary organs of the United Nations as adopted by the General Assembly under a number of resolutions, and as summarized in the Secretary-General's bulletin (ST/SGB/107/Rev.5 of 25 March 1991). In summary, travel and subsistence expenses are paid in respect of members of organs and subsidiary organs of the United Nations who serve in an individual personal capacity and not as representatives of Governments. Also, travel but not subsistence expenses are paid in respect of one representative of each Member State participating in a functional

commission of the Economic and Social Council or in a subcommission or subcommittee of a functional commission, where such representatives are nominated by their Governments in consultation with the Secretary-General and subsequently confirmed by the Council. In the case of governmental experts nominated directly by their Governments, neither travel nor subsistence is paid unless the General Assembly expressly authorizes that such payments should be made.

15. Furthermore, pursuant to General Assembly resolution 41/213 of 19 December 1986, reimbursement of travel costs for representatives of Member States attending the General Assembly is limited to the least developed countries. Following adoption of that resolution, the Advisory Committee on Administrative and Budgetary Questions noted that consideration should be given to extending the application of that principle to subsidiary bodies of the General Assembly and the Economic and Social Council. 2/ The General Assembly, in its resolution A/43/217 of 21 December 1988 decided to defer action on that issue.

16. It should also be noted that following the adoption of resolution 45/42 requesting the present report, the General Assembly adopted resolution 45/248 on 21 December 1990 which, inter alia, requests the Secretary-General to review the existing arrangements in regard to payment of subsistence allowance and standard of air travel by representatives of Member States in their official capacity to attend meetings of various intergovernmental bodies and for other United Nations official work and to submit concrete proposals to the General Assembly at its forty-sixth session, through the Advisory Committee with a view to ensuring consistency of travel arrangements within the United Nations. The General Assembly will review the arrangements regarding the payment of subsistence allowance and accommodation for air travel at its forty-sixth session.

A. Type and number of countries

17. The General Assembly, when requesting the present report, envisaged assistance "to developing countries that are members of the Commission, in particular least developed countries". Consideration would thus have to be given as to whether assistance would be limited to least developed countries or whether the criteria of eligibility would be expanded to include all or a certain number of developing countries.

18. Restricting assistance to least developed countries would be in line with the current arrangements for the regular sessions of the General Assembly. Currently, there are three least developed countries among the members of the Commission, namely Lesotho, Sierra Leone and Togo. While this number may vary with the election of new members every three years, it is likely to remain a proportionately small number. Consideration might also be given to providing assistance to all developing countries that are members of the Commission. Taking into account the changing membership of the Commission and depending on the criteria used in determining whether a member State is a developing country, the number of eligible States have varied between 16 and 21 States.

An intermediate option would consist in providing assistance to a fixed number of States from each of the regional groups comprising developing countries, namely African, Asian and Latin American and Caribbean States. For example, assistance could be provided to half of the Member States representing the developing country regional groups on the Commission. On the basis of this particular formula, assistance would be given to five African, four Asian and three Latin American and Caribbean States. The States eligible for reimbursement could be selected by the General Assembly every three years, in connection with the election of new members of the Commission, for a period of assistance of three years.

B. Number of representatives and types of expenses

19. Regarding the number of representatives, and in line with the regime which currently applies to the functional commissions of the Economic and Social Council, it would seem appropriate that travel expenses should be paid for one representative of each selected State participating in the Commission or in a working group of the Commission, where such representatives are nominated by their Governments in consultation with the Secretary-General.

20. As regards the type of expenses to be covered, the General Assembly might consider approving arrangements similar to those in place for attendance at the General Assembly and functional Commissions of the Economic and Social Council (ST/SGB/107/Rev.6 of 25 March 1991, para. 2). On that basis, assistance to eligible States Members of the Commission would cover travel, but not subsistence expenses.

C. Type and number of meetings

21. The General Assembly in its resolution 45/42, referred to attendance at the meetings of the Commission and its working groups. As indicated in paragraph 11 above, the Commission has currently, and is expected to retain, three working groups of the whole, each of which holds at least one and often two sessions each year. Thus, providing assistance for participation in the sessions of the Commission and its working groups can be interpreted as covering the expenses of one representative of each eligible State for travel to at least four and up to seven meetings a year. On the other hand, it might be envisaged to limit assistance to attendance at the annual session of the Commission and the sessions of one or two working groups. Were this option retained, a decision would have to be made regarding the working groups to be attended.

IV. CONCLUSION

22. The financial implications of establishing new entitlements for the reimbursement of travel expenses of the Members of the Commission are clearly an important factor. Should the General Assembly approve the principle of reimbursement of travel expenses for some members of the Commission, it is

estimated that depending on the scope of application of the measure, related additional requirements could range between $72,000 and $1,008,000 per biennium (see annex).

23. These expenditures could be met from two possible sources of funding: the regular budget of the United Nations or voluntary contributions. Should it decide on the latter, the General Assembly might wish to establish a trust fund to which Member States would be invited to make voluntary contributions.

Notes

1/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 17 (A/45/17), para. 73.

2/ Ibid., Forty-second Session, Supplement No. 7A (A/42/7/Add.1-10), document A/42/7/Add.4, para. 14.

ANNEX

Travel expenses for some members of the Commission

The following cost estimates are based on an average of $4,000 for a round trip between the capital of an eligible State and either New York or Vienna.

The minimum level of assistance, discussed in section III above, would require financing the travel of one representative of three least developed countries to three meetings (one meeting of the Commission and two meetings of one working group):

3 Member States x 3 meetings x $4,000 = $36,000 per year

$72,000 per biennium

The maximum option would require financing the travel of one representative of an average of 18 Member States for seven meetings (one meeting of the Commission and two meetings of each of three working groups):

18 Member States x 7 meetings x $4,000 = $504,000 per year

$1,008,000 per biennium